

INTERNAL REVENUE SERVICE
Director, EO Examinations

DEPARTMENT OF THE TREASURY
Pacific Coast Area (TE/GE)

Date: AUG 07 2004

Person to Contact: [REDACTED]

Badge Number: [REDACTED]

Contact Telephone Number: [REDACTED]

[REDACTED] (Fax)

In Reply Refer to: [REDACTED]

EIN: [REDACTED]

Certified Mail

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

The information submitted discloses that your were incorporated under [REDACTED]. The purpose for which your organization was formed per your Articles of Incorporation is ... "for charitable purposes, to be achieved through the distribution of its funds for such purposes and generally and particularly to monitor the proper installation of [REDACTED] to avoid damage to the community during [REDACTED]. The group will also provide supervision and assistance to the community with any effects caused by [REDACTED]. The group will monitor the cost and quality of [REDACTED] on behalf of the community, as well as [REDACTED] and [REDACTED]. The corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code..."

The purpose per your application, Form 1023, states as follows:

1.1 The organization's purpose is to provide safe and accurate [REDACTED] to the disadvantaged and disabled and those dependent on life support systems. Disabled veterans will benefit.

1.2 This activity will begin as soon as financially feasible.

1.3 These activities will take place within the local community by [REDACTED] and by their efforts all members of the community will be made secured and free from harm.

FACTS:

Your purpose is to provide safe and accurate [REDACTED] to the disadvantaged and disabled and those dependent on life support systems. These activities will take place within the local community by [REDACTED] and by their efforts all members of the community will be made secured and free from harm.

[REDACTED] are mapped and given to customers to keep in their possession for use in storms and gas leaks, etc. [REDACTED] will consist of [REDACTED] who will work after hours and on weekends.

Your organization uses handbills to publicize this service.

The basic source of financial support will be from the [REDACTED] charged for the purchase of [REDACTED]. Your organization charges fees of \$ [REDACTED] to the general public with discounts of [REDACTED] % for seniors and [REDACTED] % for veterans. The \$ [REDACTED] fee is an arbitrary figure chosen by your organization to cover the cost of locating [REDACTED] including equipment, repairs and upkeep, cost of transportation, and fees paid to [REDACTED]. [REDACTED] \$ [REDACTED] per hour for similar services. If customers cannot pay, the service is free within the organization's financial means.

Your organization will give service to the entire community, but will focus on helping the aged and life support citizens. The fees for services paid by the public will aid the efforts for all the customers. About [REDACTED] % of the customers will be disabled and aged.

Your organization gives out free [REDACTED] to its customers. Your organization also sells the [REDACTED] to the public to raise funds for its equipment.

ISSUE:

Does the organization qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code?

LAW:

Section 501(c)(3) of the Internal Revenue Code describes certain organizations exempt from income tax under section 501(a) and reads in part as follows:

"(3) Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on legislation, (exempt as otherwise provided in subsection (h), and which does not participate in, or intervene in including the publishing or distribution of statement), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest.

Section 513(c) of the Internal Revenue Code defines a trade or business as follows: "For purposes of this section, the term 'trade or business' includes any activity which is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors which may, or may not, be related to the exempt purpose of the organization. Where an activity carried on for profit constitutes an unrelated trade or business, no part of such trade or business shall be excluded from such classification merely because it does not result in profit."

Trade or business has the same meaning that it has for the purpose of determining whether a particular expense is a deductible trade or business expense under Internal Revenue Code section 162 and includes any activity carried on for the production of income from the sale of goods or in the performance of services. See regulations 1.513-1(b).

Section 1.501(c)(3)-1(e) provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as described in section 513. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

Section 1.501(c)(3)-1(d)(2) of the regulations provides a definition of the term "charitable." It is used in its generally accepted legal sense and includes relief of the poor and distressed and promotion of social welfare through charitable activities.

GCM 38686 provides some rationale as to whether an organization has a substantial nonexempt commercial purpose. The GCM discusses Tax Court decisions that have been identified and include: (1) whether the organization's commercial activities relate to an exempt function; (2) the particular manner in which the organization's activities are conducted; (3) the competitive nature of the organization's activities; (4) whether the organization provides some free or below cost

services; (5) whether the organization has solicited, or received voluntary contributions from the public; (6) the existence and amount of annual or accumulated profits; and (7) whether the organization's clientele are limited to other section 501(c)(3) organizations.

Revenue Ruling 69-266, 1969-1 CB 151, discusses an organization formed and controlled by a doctor "hired" to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered. The Revenue Ruling found that the organization was not exempt under section 501(c)(3) of the Code since the operation of the medical practice by the organization does not differ significantly from the private practice of medicine for profit. It was also found that the organization's primary function is to serve the private interest of its creator rather than a public interest.

Revenue Ruling 76-442, 1976-2 CB 148, discusses an organization whose primary activity is the offering of free legal services for personal tax and estate planning to individuals who wish to make current and deferred gifts to charity as part of their overall tax and estate planning. The Revenue Ruling found that aiding individuals in their tax and estate planning is not a charitable activity in the generally accepted legal sense. The organization is providing commercially available services to individuals who can afford them. The Revenue Ruling found that the organization did not qualify under section 501(c)(3) because it was not operated exclusively for charitable purposes.

ANALYSIS:

All of the preceding Code sections, Regulations sections and Revenue Rulings describe the criteria under which an organization may be exempt under section 501(c)(3) of the Internal Revenue Code. Organizations who are not operated exclusively for one of the specified purposes of section 501(c)(3) or organizations whose sole purpose is to operate a trade or business or for the private benefit of individuals is not exempt under section 501(c)(3) of the Code. Your organization's activities appear to consist solely of operating a commercially available [REDACTED] near the prevailing rates. The services are offered to the general public with discounts for seniors and the disabled. You have not solicited or received voluntary contributions from the public. None of the activities listed in either your Articles of Incorporation or on your Form 1023 meet the requirements of section 501(c)(3) of the Code or the Regulations.

CONCLUSION:

To be considered for tax exempt status under section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. Also, its activities must be restricted to those granted a section 501(c)(3) organization.

It is the position of the Internal Revenue Service, based on information submitted, that you are not entitled to exemption from Federal income tax as an organization described in section 501(c)(3) of the Code, inasmuch as you are not organized and operated exclusively for any of the specified purposes within that section.

Your organization is operating a business that is ordinarily conducted for profit.

We have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code. Accordingly, you are required to file income tax returns on Form 1120 annually with your District Director.

If you are not in agreement with this proposed determination, we recommend that you request a hearing with our office of Regional Director of Appeals. Your request for a hearing should include a written appeal giving the facts, law, and any other information to support your position as explained in the enclosed Publication 892. You will then be contacted to arrange a hearing. The hearing may be held at the office of Regional Director of Appeals, or if you request, at a mutually convenient District office. A self-addressed envelope is enclosed.

If you do not hear from you within 30 days from the date of this letter, and you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies and will then become our final determination. Section 7482(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determine that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If the determination is the final disposition by the Internal Revenue Service, appropriate State of New York officials will be advised of the action in accordance with Internal Revenue Code section 6104(c) and the applicable regulations.

If you have any questions, please contact the person named at the telephone number shown above.

Sincerely,

Steven T. Miller
Director, Exempt Organizations

Enclosures:
Form 6018
Pub 892
Notice 1214

Department of the Treasury-Internal Revenue Service
CONSENT TO PROPOSED ADVERSE ACTION
(All references are to the Internal Revenue Code)

Prepare In
Duplicate

Case Number

Date of Latest Determination Letter
N/A

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown by the box(es) check below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption under section 501(c)(3) as a charitable organization

☐ Revocation of exemption, effective

☐ Modification of exempt status from section 501(c)(1) to 501(c)(3), effective

☐ Classification as a private foundation (section 509(a)), effective

☐ Classification as a non-operation foundation (section 4942(j)(3)), effective

☐ Classification as an organization described in section 509(a)(2), effective

☐ Classification as an organization described in section 170(b)(1)(A)(ii), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records. If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Signature and Title

Date